

BEFORE THE FEDERAL ELECTION COMMISSION

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COMMISSION
SECRETARIAT

2003 MAR 11 A 9 29

In the Matter of)

Committee to Elect Mark James)

Draft Mark James for Congress and
Larry Kifer, as Treasurer)

MUR 4976

SENSITIVE

Mark James)

Friends of Jon Porter Committee)

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

accept the attached Conciliation

Agreement with CEMJ, Draft Mark James for Congress and Larry Kifer, as Treasurer ("DMJ"),
and Mark James; take no further action with respect to the Friends of Jon Porter committee;
approve the appropriate letters; and close the file.

II. DISCUSSION

DMJ is a federal political committee and was created in 1999 by Larry Kifer for the
purpose of encouraging a possible congressional race in Nevada's First Congressional District by
State Senator Mark James. CEMJ is the state committee which supported Mr. James' election to
the Nevada State Senate. After Mark James decided not to run for the federal seat, DMJ
disposed of the funds in its account on December 31, 1999 by contributing \$2,000 to the Friends
of Jon Porter, Inc. committee ("FJP"), which was the principal campaign committee of the
candidate who Mark James endorsed for the congressional seat from that Nevada district, and the
remaining \$3,096.17 to CEMJ.¹ On that same day, CEMJ also contributed \$2,000 to FJP. On

¹ The complaint also alleged that Mark James served as the financial director for FJP.

February 1, 2000, thirty-two days after receipt, FJP refunded \$1,000 to CEMJ and \$2,000 to DMJ.²

The complaint alleged that contributions were made in the name of another, a violation of 2 U.S.C. § 441f. The facts involved – the personal friendship between DMJ Treasurer Larry Kifer and Mark James, the money being transferred to FJP from both DMJ and CEMJ, and from DMJ to CEMJ on the same day, and the reported involvement of Mark James as an officer of FJP – all indicated a possible funneling scheme. On February 13, 2001, based on the information available at that time which suggested that DMJ had made a contribution in the name of CEMJ, the Commission found reason to believe that the Draft Mark James for Congress Committee and Larry W. Kifer, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A) and 441f and that the Committee to Elect Mark James and Mark James violated 2 U.S.C. § 441f.

this Office received supplemental affidavits from Larry Kifer and Mark James which disputed several key inferences underlying the Commission's earlier reason to believe findings. The Respondents acknowledged that Larry Kifer and Mark James are long-time friends, but maintained that Kifer formed and operated DMJ without any discussion with employees, agents, or anyone affiliated with Mark James or CEMJ. After Mark James decided not to seek election to federal office, Kifer decided to terminate DMJ. *Supplemental Affidavit of Larry Kifer, Paragraph 7. Attachment 1. In an attempt to disburse.*

² FJP made the refunds approximately three weeks before the complaint was filed after internal questions were raised about the contributions.

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1 remaining funds in the DMJ account, Kifer contributed \$1,000 to FJP for the primary election
2 and \$1,000 to FJP for the general election. *Supplemental Affidavit of Larry Kifer, Paragraphs*
3 *10-11*. Kifer then contributed the remaining funds in the DMJ account to CEMJ. *Supplemental*
4 *Affidavit of Larry Kifer, Paragraph 13*. On that same day, CEMJ, acting on James' instructions,
5 made a \$1,000 contribution to FJP for the primary election and a \$1,000 contribution to FJP for
6 the general election.⁴ *Response of CEMJ at 3*.

7 In his supplemental affidavit, Mark James states that he did not have any discussion or
8 agreement regarding the contributions by DMJ to either CEMJ or FJP. "I did not solicit, request
9 or direct DMJ or any of its agents to make that contribution to CEMJ, nor did I have a prior
10 agreement, communication or understanding with Mr. Kifer regarding disbursement of DMJ
11 committee assets to FJP or CEMJ." *Supplemental Affidavit of Mark James, Paragraph 15*.

12 Attachment 2. Larry Kifer echoes the lack of an arrangement with respect to the contributions at
13 issue in his supplemental affidavit: "I had no prior agreement, communication or understanding
14 with Mark James regarding disbursement of DMJ committee assets to FJP or CEMJ."
15 *Supplemental Affidavit of Larry Kifer, Paragraph 6*.

16 In their responses, the Respondents maintain that the contributions to FJP that are at issue
17 here "were made from funds contributed to and controlled by two separate and independent
18 committees, only one of which was controlled by Mark James." *Reason To Believe Response of*
19 *CEMJ at 1*. Both the affidavit of Larry Kifer and the affidavit of Mark James state that James
20 had no "direction, authority or control" over DMJ. *Supplemental Affidavit of Larry Kifer,*
21 *Paragraph 6*. The affidavits also state that the decision to make the contribution to DMJ was not

⁴ The DMJ contribution was posted to the CEMJ account on January 5, 2000, the same day that the CEMJ checks to FJP cleared. CEMJ has also provided bank statements indicating that it had sufficient funds to make these contributions even without the funds from DMJ.

1 "solicited, requested or in any fashion directed by Mark James or any authorized agent of
2 James." *Supplemental Affidavit of Larry Kifer, Paragraph 14.*

3 These affidavits directly rebut the allegations lodged in the complaint. Unlike the earlier
4 responses to the complaint, the supplemental affidavits of both Kifer and James appear to
5 remove any question as to whether Mark James and Larry Kifer, or their authorized agents, had
6 any communication regarding the disbursement of DMJ funds to either CEMJ or FJP. Further,
7 the timing of the contributions to FJP on the last day of the Federal Election Commission 1999
8 reporting period may also be explained by the desire to allow FJP to demonstrate better results
9 on its Year-End Report. Based on an examination of this new evidence, this Office does not
10 believe that the theory underlying the earlier reason to believe findings should be pursued in this
11 Matter.

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Throughout the investigative process, no additional information regarding FJP has been uncovered. Therefore, this Office also recommends that the Commission take no further action and close the file with respect to FJP.

III. RECOMMENDATIONS

- 1.
2. Approve the attached conciliation agreement for Mark James, the Committee to Elect Mark James, and Draft Mark James for Congress and Larry Kifer, as Treasurer;
3. Take no further action with respect to Friends of Jon Porter;
4. Approve the appropriate letters;
5. Close the file.

Lawrence H. Norton
General Counsel

3/10/23
Date

BY: Rhonda J. Vosdigh
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